Supreme Court, U.S.
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No. 79-1197

Supreme Court of the United States

October Term, 1979

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

MERCY HOSPITAL ASSOCIATION

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION TO INTERVENE

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Local Union No. 30, International Union of Operating Engineers, AFL-CIO (hereinafter the "Union"), respectfully moves to intervene in this case on the side of the petitioner, National Labor Relations Board. In support of this motion, the Union states as follows:

1. The Union is the original petitioner in the representation proceedings before the National Labor Relations Board (hereinafter the "Board"), which proceedings resulted in the Union being certified by the Board as collective bargaining representative of the affected employees. Moreover, the Union was the charging party in the unfair labor practice proceedings before the Board, in which the Mercy Hospital Association was found guilty of an unlawful refusal to bargain. That finding was reversed by the Second Circuit Court of Appeals in the decision below.

2. In the Circuit Court proceeding below, the Union, based on its view that the appropriate unit issue was of a routine nature in light of the Board's treatment of similar cases, did not seek to intervene. Upon issuance of the Circuit's decision, however, the Union moved to intervene solely to participate in further proceedings in this Court. That post-judgment motion was denied. The Union therefore seeks this opportunity to defend, as a party, its interests here.

3. Subsequent to the decision below, the Second Circuit issued an order remanding to the Board another case, in which the Union is a party and which presents the identical issue presented here, for reconsideration consistent with its decision in this case. *Yonkers General Hospital v. NLRB*, 2nd Cir. No. 79-4124 (Order entered January 17, 1980). The Union's interest in this case has been, thus, further intensified.

4. On March 31, 1980, Mr. Justice Brennan signed an order granting an extension of time within which to file a petition for a writ of certiorari in response to an application filed by the Solicitor General in *Allegheny General Hospital v. NLRB*, 608 F.2d 965 (3rd Cir. 1980). In his application, the Solicitor General states that the issue in *Allegheny* is the same as that presented in the instant case, and that a petition for a writ of certiorari may be filed in *Allegheny* depending upon the Court's disposition of the petition for a writ of certiorari in this case. It would thus appear that the issue presented here embodies an important question of federal labor law which has not been, but should be, resolved by this Court. Such a critical determination requires the full participation of all the affected parties.

5. Identical motions to intervene have been granted in two other health-care industry cases: *Beth Israel Hospital v. NLRB*, 425 U.S. 940 (1978) and *Baptist Hospital, Inc. v. NLRB*, 422 U.S. 773 (1979). See also *NLRB v. Acme Industrial Co.*, 384 U.S. 925 (subsequently decided at 385 U.S. 421); *Banks v. Chicago Grain Trimmers*, 389 U.S. 813 (subsequently decided at 390 U.S. 459). As this Court has implicitly recognized in granting the above cited motions to intervene, the sensitive nature of health care industry labor issues requires the fullest participation by all affected parties in order to ensure as thorough and complete an elucidation of the issues as possible.

CONCLUSION

For the foregoing reasons this motion should be granted.

Respectfully submitted,

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